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1. Coerced Drug Abstinence

Coerced drug abstinence of people released on probation makes the common error of attributing criminality to the use of certain chemicals. This plan assumes that those with dirty urine should be jailed because they will commit robberies, burglaries, and other crimes. This supposition is not only wrong; it trifles with our most precious right - the presumption of innocence. Some 80 million people have used illegal drugs including the majority of police officers I hired during my eighteen years as police chief of two of America's largest cities. These cops, like the last president elect of the United States, whether he turned out to be the Republican or Democratic candidate, did not commit other crimes and they grew out of their drug use.

Coerced abstinence displays a willingness to incarcerate hundreds of thousands of people because society *thinks* that they may commit future crimes. However, as my colleague at the Hoover Institution, Milton Friedman has pointed out, it is Prohibition not the particular chemical substance that leads to crime. During the ten years I worked as a policeman in Harlem I reached the same conclusion. Hard core drug users stole to buy drugs whose prices were inflated by as much as 17,000% because they were illegal. But those addicted to other mind-altering drugs such as alcohol, Methadone, Prozac or Valium are viewed as patients, not predatory criminals. Coerced abstinence has been labeled as "a life sentence on the installment plan." It is all the

more shameful coming from people whose early drug use would have landed them in and out of jail and destroyed any chance of successful careers.

Professor Mark Kleiman has been cited as the originator of the plan. I have heard Professor Kleiman also advocate that before someone is served a beer he should have to produce a government license for the bartender indicating that he is a responsible drinker. Presumably, violators would land in prison.

Others endorsing the idea of mandatory drug testing and jailing of probationers, ironically skewer big government programs and bureaucracies for their counter-productive results. It is puzzling to see them simultaneously propose a massive new program for a criminal justice system that has trouble keeping track of paroled pedophiles, rapists, and men under court orders to stop stalking women and children. Present high incarceration rates, labeled by former drug czar General McCaffrey as "America's gulag," will increase enormously and the penalties would fall disproportionately on people of color under drug courts and "coerced abstinence". Drug war advocates believe that John Stuart Mill's contention that government has no right to interfere with an individual's action unless they harmed someone else somehow did not apply to the issue of illegal drugs. Yet Mill's famous essay "On Liberty" resulted from a debate in which he was *opposing the inclinations of some states in America to criminally prohibit the drug, alcohol*.

For roughly the first 130 years of our republic, Americans' right to life, liberty and the pursuit of happiness included the right to ingest whatever chemicals one desired. Lest there be any doubt about this, we should remember that Thomas Jefferson who penned those words in the Declaration of Independence subsequently ridiculed France for imposing laws on diet and prescription drugs. Jefferson said that

a government that controls what its citizens eat and the kind of medicine they take will soon try to control what its citizens think. A few years ago, the Clinton White House was embarrassed when it was disclosed that it had been secretly paying television networks, magazines, and newspapers to include "correct" views on drugs for our consumption. More recently, the Bush administration has shamelessly portrayed illegal drug users as supporters of terrorism. This distortion continues a century of government and other groups dehumanizing the users of CERTAIN chemicals. Actually, terrorists didn't make a dollar on Prozac, Valium, Vicodin and other powerful mind altering drugs. Vast profits for criminals and terrorists are produced only because our government has adopted the ill-chosen policy of trying to prohibit certain drugs through criminal prosecution, not because of the nature of the substances.

In 1914, congress passed the Harrison Act leading to the criminalization of drugs and our disastrous drug war. Prior to that time, there was no \$500 billion black market in drugs and organized crime drug structure with its associated violence and pervasive corruption of government officials. Before the Harrison Act passed, drug users were not stigmatized as predatory criminals, and drug historian, Yale Professor David Musto, M.D., notes that narcotic use in the United States had been declining for some fifteen years before the federal government outlawed opium. The decrease in drug use occurred without the government trying to eliminate drugs or jailing hundreds of thousands of Americans. It seemed that requiring manufacturers to label what was in their products combined with public health messages was sufficient to reduce drug use. Why does the thought of responsible citizens controlling their own lives without government coercion seem so threatening?

California

The state of California should take the lead by adopting a policy whereby no individual is viewed as a criminal because they use or possess any drug. It is far wiser, more fiscally prudent and humane to make voluntary treatment available for those who desire it than to saddle the police and criminal justice system with the impossible task of trying to control what kind of chemicals Californians ingest in private.

Future Budget Problems

California like other states is facing a grim future for funding various public programs. My recommendation is that the state, by adopting the idea that users of certain drug should not be treated as criminals, can shift enormous expenditures presently spent on policing, adjudication, and corrections. One method of doing this would be to appropriate the costs of minor drug arrests, their prosecution, and any confinement or coerced treatment to local and county jurisdictions. Local and county governments could be allowed to instead to finance voluntary treatment programs with the funds diverted from drug law enforcement.

2. Disproportionate Representation of Minorities

The average American's image of drug users is of dangerous young people of color - males who will rob them to obtain money to buy drugs, or young women prostitutes spreading disease and delivering "crack" babies as the result of enslavement to drugs. These cherished misconceptions are the enduring and erroneous foundations of America's ill-conceived "war on drugs." Actually, the overwhelming majority of American drug users have been Caucasians, historically as well as now. The fact that minorities are arrested and incarcerated at vastly disproportionate rates for drug offenses contributes to false stereotypes and permits

the continuation of one of the most irrational public policies in the history of the United States. Blacks make up about 15% of America's drug users but more than one third of adults arrested for drug violations are black. Furthermore, relatively few of America's estimated 80 million users of illegal drugs go on to commit other crimes. The majority of policemen I hired during my eighteen years as police chief of two of America's largest cities had grown out of early drug use, just like the next president of the United States, be he Republican or Democrat.

Yet I can remember, as a young policeman in Harlem some forty years ago, gathering in a cop bar with my colleagues after work while they complained vigorously about the junkies who made our work so difficult. During our discussions we drank prodigious amounts of beer without the slightest awareness that we were consuming a drug which could be as lethal as heroin. In fact, more of my fellow policemen died in driving accidents after these drinking sessions than were slain in the line of duty. Even today, eighty-five years after the federal government first outlawed narcotics, public and police attitudes toward the dangerousness of drugs are shaped by ignorance of their impact and by mistaken prejudices regarding their users, the same irrationalities that led to the criminal Prohibition of certain drugs. Individuals addicted to Prozac, Valium, or other psychoactive prescription drugs are regarded as patients. Yet millions of our own citizens using heroin, cocaine, or marijuana have been and are regarded as dangerous enough to be caged in brutal prisons, frequently under mandatory sentences more characteristic of a totalitarian society than a democracy.

The impetus for the passage of the Harrison Anti-Narcotics Act on December 17, 1914 came from the lobbying efforts of the American missionary societies in China who enlisted the aid of other alcohol temperance organizations and religious groups in

America to get their version of sin written into the penal code. The anti-drug arguments were replete with statements including the claim that it was the duty of whites to save the inferior races. Those moving to criminalize drugs made references to Negroes under the influence of drugs murdering whites, degenerate Mexicans smoking marijuana, and "Chinamen" seducing white women with drugs.

This racist nonsense would be laughed at today, but it was quite influential in the passage of anti-drug legislation, as was naïveté about the impact of ingesting various chemicals. David Musto, M.D., the renowned drug historian and professor of Psychiatry and History at Yale University, wrote in *The American Disease: Origins of Narcotics Control*, "Consequently, the story of the Harrison Act's passage contains many examples of the South's fear of the Negro as a ground for permitting a deviation from the strict interpretation of the Constitution." Musto also noted that opium use in America had been declining for some fifteen years before the federal government saw fit to outlaw it. The Harrison Act of 1914 was quite radical in that it represented a gross departure from past federal practice of not interfering with state police powers.

The racist arguments convinced southern representatives, who were reluctant to acknowledge federal power over states' rights, to vote for the Harrison Act. Congressional uneasiness over the law's constitutionality caused it to label the Act a revenue measure, but in 1925, the Supreme Court correctly interpreted it as a penal statute, making it the cornerstone of laws leading to the present "war on drugs."

It is one of the ironies of history that national black political leadership today paradoxically accepts the racist implications of white southern politicians in 1914 that Negroes were especially susceptible to the negative impact of drug use. With the notable exception of Kurt Schmoke, former mayor of Baltimore, who calls for

"medicalization" of drug use, many African-American politicians describe decriminalization of drugs as racial "genocide," thus subliminally reinforcing fears that people of color are more susceptible to drug use and the harm it can cause.

The Harrison Act of 1914 was a remarkably radical change in public policy. Racism, religious pressure, and an elitist concern to ensure that the lower classes were protected from temptations to lead "immoral" lives prevailed over the promises of the Declaration of Independence. For roughly the first 130 years of our nation, at least under national law the right to life, liberty and the pursuit of happiness included the right to ingest whatever chemicals one wished. These rights were not simply an omission by Thomas Jefferson, who penned the immortal words of the Declaration and later chastised France for passing laws regulating diet and medicine. Jefferson said that a government that controlled which food people could eat and the kind of medicine they took would soon try to control what people thought.

Since 1914, American drug control efforts have ebbed and peaked. However, a sea change occurred in 1972 when Richard Nixon saw a political advantage in telling the citizenry that a war against drugs was necessary. The federal budget for the "war" was roughly \$101 million that year. Presently, it is around \$20 billion a year. By comparison, the average monthly social security check in 1972 was \$177. This year the monthly check is approximately \$900. If, however, social security benefits had increased at the same rate as drug war spending, today's check would be more than \$30,000 a month. The annual cost of the drug war exceeds \$40 billion a year when state and local costs are added to federal.

The magnitude of increase and paucity of positive results has recently begun to discomfit some of the leading academic supporters of the drug war. A mainstay of

government strategy has been to reduce foreign production of illegal drugs. Yet a dozen years after congress proclaimed that we would have a drug free America by 1995, opium production has doubled in Southeast Asia and cocaine crops have increased by a third in Central and South America.

Periodic government announcements of crises in methamphetamine (speed), ecstasy, and other designer drugs, increasingly being manufactured in Mexico and domestically, are intended to mobilize more public support for the drug war, yet they further illustrate the hopelessness of United States attempts to reduce world drug production. Simultaneously, the government is forced to concede that despite interdiction efforts, ninety percent of the drugs arrive in the U.S. undetected. The United States, as well as most of the world, is awash in illegal drugs, violence of the \$500 billion illegal drug black market, and unprecedented police and political corruption resulting from the roughly 17,000% mark-up caused by the Prohibition of cheaply produced chemical substances.

The sheer irrationality of continuing to expand a policy doomed to failure begs an explanation. A jihad comes to mind, a holy war that must be fought regardless of the human horrors that result. Thus, some scholars who can no longer ignore the inevitable failure of past practices now proclaim a "new" solution that the government is eagerly embracing. The phrase "coerced abstinence" describes the practice of continuously testing convicted criminals (and eventually, in all probability, many others) through special drug courts, to detect the presence of illegal drugs in their bodies. Judges traditionally functioning as impartial legal experts during trials to guarantee due process of law will now become shamans taking on the responsibilities of judging who is falling under evil spells. We will have legions of real life television

Judge Judy's routinely denouncing and incarcerating people not on the basis of what they did, but because certain chemicals are present in their urine.

Scholars who know well the difference between correlation and causation have casually disregarded two axioms of behavioral science by advancing coerced abstinence as new when, in fact, it is the same old demonization of certain drugs present in our culture and the same dehumanization of their users. First of all, many individuals convicted of crime do have a history of previous use of illegal drugs. But high correlations of illegitimacy, illiteracy, extreme poverty, lack of health care, child abuse, failure in school, smoking, gambling, unhealthy diets, poor employment history, and a host of other variables are also present in criminal populations. Drug use as an explanation of criminal behavior is no more persuasive than these other characteristics. Secondly, experts know that past behavior, including the use of certain chemicals, cannot be used to accurately predict the future behavior of a particular individual.

America's drug war has always trifled with science. But the assumption that the presence alone of a particular chemical in a person's bloodstream is cause for imprisonment replaces the fundamental American right of presumption of innocence with the police state mentality of assumed guilt. Nevertheless, we should not worry. The people in jail cells are not prisoners, just patients undergoing the "new" therapy of coerced abstinence.

3. Gangster Cops in the Drug War

On February 29, New York Mayor Rudolph Giuliani told TV interviewer Larry King that Amadou Diallo's death was a tragic accident, but unfortunately people also died every week in tragic automobile accidents. The following day, across the country,

Los Angeles Mayor Richard Riordan, commenting on the Los Angeles Police Department's questionable report on LAPD gangster cops running amuck, said he had never been more proud of the department. Both mayors were straining to restore credibility to their damaged police departments. The two politicians were also defending their own legacies as crime fighters, as well as the confrontational police cultures they had nurtured. Although the geography is different, the political spin reaches White House levels.

The LAPD scandal involved an "elite" anti-gang unit. Rafael Perez, a former member of the unit, was convicted of stealing cocaine from the police evidence room. In return for a lesser sentence, Perez told of extensive criminal activity in the department. Cops had shot people without cause, planted guns on them, and then celebrated the shootings at beer barbecues. Perez depicted how cops had framed people and testified against those victims to ensure that they received long prison terms. He also detailed the same kind of drug-related police crimes that have plagued New York and other cities. Cops committed armed robberies of drug dealers, taking their money and selling their drugs themselves.

The LAPD report was widely criticized for blaming the scandal on a few rotten apples, when allegations from the convicted cop and a number of citizens were that numerous LAPD cops had perpetrated a wave of corruption and gangsterism. The city is facing potential bankruptcy from lawsuits against its police department. It is difficult to understand why the mayor has "never been prouder" of the department.

The New York case that Mayor Giuliani would like to see forgotten involves Mr. Diallo, who was unarmed and had committed no crime, but was killed in his own hallway in a barrage of 41 police bullets. His death at the hands of four plainclothes

officers from the "elite" NYPD Street Crimes Unit certainly is not comparable to a traffic accident.

My father, brother, uncles, cousins and I collectively served more than 150 years in the NYPD. None of us would have shot Mr. Diallo. If we had, a jury would have convicted us of breaking the law, because in those days both the formal and informal peer values of policing held that you did not shoot unless you were sure the bad guy was going to shoot at you. The jury that acquitted the four New York policemen who killed Diallo reflected the new political and police morality. The cops had been way too aggressive and had made a fatal mistake, but their aggression flowed from police department policy. Therefore, *they* had committed no crime.

I left the NYPD after 17 years to become police chief of two of America's largest cities, Kansas City and San Jose, over the next 18 years, during which time I observed a sea change in American policing. Spurred on by fiery political rhetoric of a war on drugs and crime, the NYPD, LAPD and other departments unleashed plainclothes police to "hunt" drug violators and other criminals in minority neighborhoods. The NYPD Street crimes unit bragged, "We own the night." Its LAPD counterpart, CRASH (Community Resources Against Street Hoodlums," was equally macho. Some of its members wore death-head logos on their unit jackets and similar tattoos on their arms, aping the intimidation methods of the street gang members they were supposed to police.

Both of these bellicose units were formed in part because there are no victims or witnesses in drug crimes as there are in murders, rapes and assaults. Thus many cops, with encouragement from their superiors to produce the arrests demanded by city hall, began to regard everyone in certain neighborhoods as suspects. In 1968, in

Terry v Ohio, the U.S. Supreme Court approved letting officers frisk people under questioning for suspicious actions in the interest of the officer's safety. The court permitted an external "pat down" for weapons, but not a search for drugs. Nevertheless, millions of times a year in the name of the war against drugs, police officers do illegally search people and, when they discover drugs, perjure themselves so that the evidence is admissible. These police felonies have become so commonplace that they have found their way into police jargon. In the NYPD, cops joke about testilying instead of testifying. In the LAPD, it is laughed at as "joining the liars club."

These aggressive tactics have not conquered the drug problem, but throughout the nation they have provided an umbrella under which some cops have become badge-carrying gangsters, committing thousands of crimes such as murders, kidnappings, armed robberies, stealing drugs and selling drugs and framing people. The results have been devastating to the victims, to minority communities, and to honest cops.

Guilty cops, after being caught in predatory felonies, rationalize their conduct. They dehumanize the "enemy." New York cops call their victims "mutts, and scum," while members of the LAPD refer to them as "assholes or dirtbags." The rogue cops universally talk about a sense of street justice permeating their departments. "The end justified the means. These were bad guys. We did what we had to do to get them," as one convicted sergeant put it.

The public does not realize that police drug gangsterism is not just a local problem, but has become a national epidemic. The police code of silence and tendencies of police chiefs and mayors to put a damage-control spin on scandals have obscured the magnitude police drug-related crimes. Assurances that only a few cops

are involved and that action has been taken so that it can "never happen again" reassure citizens. But the ugly truth is that the confrontational style of policing illustrated by New York and Los Angeles permits the gangster cops to go on with their crimes for years. One of the great ironies is that some of the worst gangster cops are far from rotten apples. They have outstanding arrest records and own more commendations than their fellow officers. Otherwise-honest cops and even supervisors hesitate to report the gangster cops, because all too often the message from city hall is one of law and order and denial of police misconduct. Whistle-blowers are more likely to be fired than rewarded.

Thankfully, the nation in recent years has enjoyed welcome decreases in crime, and fewer police officers are being slain in the line of duty. A booming economy, the decline of the crack cocaine market, and demographics probably have as much to do with it as the police. And crime has decreased in large cities such as San Jose and San Diego that reject abrasive police methods in favor of working in partnerships with neighborhood groups to reduce disorder and crime. In any event, lawbreaking by law enforcers is not an option in a free society. Where police crime flourishes it can only create disrespect for law and police, and create more crime.

No one knows how many hundreds of millions of dollars have been paid out in successful lawsuits against police abuses. Bad policing ends up in human tragedies. These are not accidents but the inevitable result wrong-headed styles of policing. The potential that Los Angeles may be bankrupted due to actions of its police force may finally force ambitious politicians everywhere to avoid "in your face" policing. The first step in avoiding unnecessary police shootings and police gangsterism is for politicians to drop the war rhetoric and to train police officers to understand that they are not

soldiers with a duty to kill the "enemy," but peace officers with a duty to protect and serve the communities in which they work.